



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2017-0340; FRL-9969-72-Region 2]

Approval and Revision of Air Quality Implementation Plans; State of New York; Regional Haze State and Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a source-specific revision to the New York State Implementation Plan (SIP). The SIP revision establishes Best Available Retrofit Technology (BART) emission limits for sulfur dioxide that are identical to those set by the EPA's Federal Implementation Plan (FIP) for the Roseton Generating Station, Units 1 and 2, which was promulgated in an action taken on August 28, 2012. The EPA proposes to find that the SIP revision fulfills the requirements of the Clean Air Act and the EPA's Regional Haze Rule for the Roseton Generating Station, Units 1 and 2. In conjunction with this proposed approval, we propose to withdraw those portions of the FIP that address BART for the Roseton Generating Station, Units 1 and 2.

DATES: Comment must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R02-OAR-2017-0340), to <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any

comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Irene B. Nielson, Environmental Protection Agency, Air Programs Branch, 290 Broadway, New York, New York 10007-1866 at 212-637-3586 or by email at nielson.irene@epa.gov.

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Throughout this document whenever “Agency,” “we,” “us,” or “our” is used, we mean the EPA.

I. What Action is the EPA Proposing?

The EPA is proposing to approve a source-specific State Implementation Plan (SIP) revision for Units 1 and 2 at the Roseton Generating Station submitted by the New York State Department of Environmental Conservation (NYSDEC) on April 18, 2017. The EPA is proposing to approve emission limits for sulfur dioxide (SO₂) for Units 1 and 2 at the Roseton Generating Station that are equivalent to the emission limits established by the EPA’s Federal Implementation Plan (FIP), as promulgated on August 28, 2012 (77 FR 51915).

II. What is the Background Information for this proposal?

This section provides a brief overview of the requirements of the Clean Air Act (CAA) and Regional Haze Rule, as they apply to this particular action. Please refer to our previous rulemakings on the New York Regional Haze SIP for additional background regarding the visibility protection provisions of the CAA and the Regional Haze Rule.¹

A. SIP and FIP Background

The CAA requires each state to develop plans to meet various air quality requirements, including protection of visibility. (CAA sections 110(a), 169A, and 169B). The plans developed by a state are referred to as SIPs. A state must submit its SIPs and SIP revisions to EPA for approval. Once approved, a SIP is federally enforceable, that is enforceable by the EPA and subject to citizen suits under the CAA. If a state fails to make a required SIP submittal, or if we find that a state’s required

¹ 77 FR 24794 (April 25, 2012)(proposed rule); 77 FR 27162 (May 9, 2012)(Notice of Data Availability); 77 FR 51915 (Aug. 28, 2012)(final rule).

submittal is incomplete, or if we disapprove the submittal, then EPA must promulgate a FIP to fill this regulatory gap. (CAA section 110(c)(1)).

B. Regional Haze Background

In the 1977 Amendments to the CAA, Congress initiated a program for protecting visibility in the nation's national parks and wilderness areas. Section 169A(a)(1) of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution." In 1990 Congress added section 169B to the CAA to address regional haze issues. On July 1, 1999, the EPA promulgated the Regional Haze Rule (RHR) (64 FR 35714). The requirement to submit a Regional Haze SIP applies to New York and all 50 states, the District of Columbia and the Virgin Islands. The RHR required states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007. 40 CFR 51.308(b).

C. EPA Action on New York's Regional Haze Submittals

The EPA's final action on New York's Regional Haze SIP included approving 17 source-specific SIP revisions containing permits for Best Available Retrofit Technology (BART) and promulgating a FIP to address two sources where EPA disapproved New York's BART determinations. These two sources are the Roseton Generating Station (Units 1 and 2) and the Danskammer Generating Station (Unit 4). 77 FR 51915 (August 28, 2012).

In the 2012 FIP, the EPA "encourage[d] New York at any time to submit a SIP revision to incorporate provisions that match the terms of our FIP, or relevant portion thereof," explaining that

if EPA approved the SIP revision, it would replace the FIP provisions (77 FR 51915). On April 18, 2017, NYSDEC responded to this by submitting a request for a source-specific SIP revision for the Roseton Generating Station, Units 1 and 2, that matches the terms of EPA's FIP. Because NYSDEC was not required to update its BART determinations beyond incorporating the BART emission limits from the 2012 FIP, the EPA has no basis to disapprove the SIP revision and supplant it with another FIP. Therefore, in this action, the EPA proposes to approve the SIP revision and remove the Roseton Generating Station, Units 1 and 2, from the FIP. This action follows EPA's proposed action to remove the Danskammer Generation Station Unit 4 from the FIP. See 82 FR 21749 (May 10, 2017).

III. What is included in the NYSDEC SIP submittal?

On April 18, 2017, NYSDEC submitted a request for a source-specific SIP Revision for Roseton Generating Station, Units 1 and 2, intended to replace the EPA's FIP BART emission limits and related requirements that were promulgated on August 28, 2012 (77 FR 51915).

NYSDEC submitted to the EPA the Title V permit conditions 32.1 and 32.2 (pages 30-31) of the permit renewed on December 5, 2016 for the Roseton Generating Station, Units 1 and 2, and a copy of the NYSDEC ENB notice of February 15, 2017 for the proposed Roseton Generating Station SIP revision.²

IV. What is the EPA Analysis of NYSDEC's submittal?

² In the SIP submittal and in subsequent correspondence with the EPA, NYSDEC notes the NO_x and PM limits for Roseton Generating Station Units 1 and 2, which were not subject to the FIP and are not part of this SIP action, are consistent with BART limits approved by EPA in its August 28, 2012 Final Action on New York's Regional Haze SIP (77 FR 51915).

NYSDEC's submittal includes BART emission limits for the Roseton Generating Station, Units 1 and 2, that are identical to those contained in the EPA FIP: 0.55 pounds of SO₂ per million British thermal unit (lb SO₂/MMBtu) calculated on a 24 hour average for each unit (Units 1 and 2).

The EPA has evaluated and is proposing to approve NYSDEC's SIP submittal for the Roseton Generating Station, Units 1 and 2, which consists of emission limits for SO₂ and other administrative requirements (i.e., monitoring, recordkeeping and reporting requirements). The SIP requirements are identical to those in the EPA's FIP promulgated on August 28, 2012. Consequently, the EPA proposes to withdraw those portions of the FIP that address BART for the Roseton Generating Station, Units 1 and 2. The EPA will fully consider all significant comments on this proposed revision to the NYSDEC SIP with regard to Roseton Generating Station.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference a source-specific SIP revision dated April 18, 2017, which includes BART emission limits for SO₂. The summary of emission limits and other enforceable requirements are included in section IV of this rulemaking. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 2 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

VI. Statutory and Executive Order Reviews

In reviewing NYSDEC's SIP submittal, the EPA's role is to approve state choices if they meet the requirements of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993)) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Sulfur oxides, Reporting recordkeeping requirements.

Dated: September 29, 2017.

Catherine R. McCabe,
Acting Regional Administrator,
Region 2.